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To: Microsoft ATR
Date: 1/8/02 11:32am
Subject: Reply comments to proposed settlement

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This is my response to the proposed settlement of US v. Microsoft as called for under the Tunney Act.

The proposed settlement is at the least inadequate and at most actually rewards Microsoft and punishes its competitors for its past behavior. It must not be forgotten that Microsoft has been found guilty of anticompetitive behavior. Any settlement must take into account what has been (it can now be said) proven in a court of law. If one wanted to be charitable and keep the major components of the settlement, one would have to demand that the section that talks about Microsoft being required to open its protocol specifications to certain well-heeled competitors be recrafted to require opening those specifications to everyone. The settlement ratifies Microsoft's monopoly on the desktop and seeks to insure a level playing field elsewhere. The position of open-source operating systems and software would be damaged beyond any possible repair if they were not allowed to participate as equal partners sharing in the same information as commercial entities. Disclosure of such information would not in any way harm Microsoft (we're not talking about Microsoft's unpublished source code. We're merely talking about specification documentation), and would certainly benefit consumers indirectly by giving them more choices for their backend servers, which would spur Microsoft to insure that their implementations were competitive both in price and quality.

But the real pity is that all of the above presumes, as the settlement already does, that Microsoft's monopoly on the desktop is sacrosanct. It should not be. A much better settlement would address the root of the problem - the OEM agreements between Microsoft and major PC manufacturers, for it is the fact that OEMs are actually prevented by Microsoft from providing alternative platforms to consumers that makes alternative platforms unattractive. Such unattractiveness is the fount from which pour like a flood all advantages Microsoft has in the desktop marketplace. The following steps are necessary to address this:

1. OEMs should be required to list the cost of any and all Microsoft software supplied preinstalled on the computer at purchase-time as a separate line item. Customers should be allowed to purchase computers either without any such software at all (should they wish to purchase or otherwise obtain it elsewhere) or by choosing from alternatives

offered by the OEMs. Microsoft argues that this would merely encourage piracy of their products. Such an argument completely ignores any possibility that suitable software could be found elsewhere (which clearly is the case despite Microsoft's monopoly). The status quo allows Microsoft to effectively levy a tax on all pre-built computer systems regardless of whether the user intends to actually use the supplied Microsoft software or not. Users who wish to run an alternative operating system are thus required to pay for two of them, one of which they will never use.

2. OEMs should be allowed to offer machines configured with multiple operating systems if they (and the customers) choose. Currently OEMs are barred from doing so by Microsoft. It is possible (indeed, it is a frequent occurrence) for one computer to allow the user to select at boot time from a number of alternative operating systems, giving the user the choice to select the one desired for the task at hand. Requiring the user to repartition the hard disk (throwing away the preinstalled software provided by the OEM at purchase time) in order to make room for alternative operating systems is a significant hurdle that solidifies Microsoft's death-grip on the desktop marketplace.

If the settlement did nothing more than these two things, I believe it would be sufficient to reignite competition in the desktop operating system marketplace. Microsoft would not be punished beyond merely forcing them to be on a level playing field with everyone else. Isn't that the outcome that everyone wants?

Signed,

Nicholas W. Sayer